



PATENT  
Customer No. 22,852  
Attorney Docket No. 05725.0793-00

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: )  
)  
**Sandrine DECOSTER et al.** ) Group Art Unit: 1617  
)  
Application No.: 09/692,155 )  
) Examiner: G. Yu  
Filed: October 20, 2000 )  
)  
For: COSMETIC COMPOSITIONS )  
COMPRISING AT LEAST ONE )  
SILICONE COPOLYMER AND AT )  
LEAST ONE CONDITIONER, AND )  
USES THEREOF )

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Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

**APPEAL BRIEF UNDER 37 C.F.R. § 1.192**

In support of the Notice of Appeal filed February 11, 2004, the period for response extended by the petition and fee filed herewith, and pursuant to 37 C.F.R. § 1.192, Appellants present in triplicate this brief and enclose herewith a check for the fee of \$330.00 required under 37 C.F.R. § 1.17(c).

This appeal is in response to the rejection dated October 22, 2003, of claims 1-71, 73, 74, 81-85, 94, and 95, which are set forth in the attached Appendix. If any additional fees are required or if the enclosed payment is insufficient, Appellants request that the required fees be charged to Deposit Account No. 06-0916.

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**I. Real Party In Interest**

L'Oréal S.A. is the assignee of record.

**II. Related Appeals and Interferences**

Appellants, Appellants' undersigned legal representative, and the assignee of record know of no other appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**III. Status Of Claims**

Claims 1-71, 73, 74, 81-85, 94, and 95 are pending in this application. Claims 86-92 are withdrawn from consideration. As indicated in the Final Office Action of October 22, 2003, the claims have been finally rejected as follows:

(1) Claims 1-16, 44-47, 56, 73, 74, 81-85, 94, and 95 have been finally rejected under 35 U.S.C. § 103(a) as unpatentable over EP 0874017 to Dalle et al. ("*Dalle*") in view of U.S. Patent No. 5,863,943 to Groh ("*Groh*");

(2) Claims 1-16, 44-71, 74, 81-84, 94, and 95 under 35 U.S.C. § 103(a) as unpatentable over *Dalle* in view of U.S. Patent No. 5,804,207 to Dubief ("*Dubief*");

(3) Claims 1-17, 25, 27, 44-46, 56, 70, 71, 73, 74, 81-84, 94, and 95 under 35 U.S.C. § 103(a) over U.S. Patent No. 4,183,917 to Iwao et al. ("*Iwao*") in view of *Dalle*; and

(4) Claims 18-24, 26, 28-43, 47-51, 60, and 65-69 under 35 U.S.C. § 103(a) as unpatentable over *Iwao* in view of *Dalle* and further in view of U.S. Patent No. 6,039,936 to Restle et al. ("*Restle*").

**IV. Status Of Amendments**

An Amendment After Final, filed on January 22, 2004, was not entered. Thus, no claims have been amended in response to or subsequent to the final Office Action dated October 22, 2003.

**V. Summary Of Invention**

The present invention relates to novel cosmetic conditioning compositions. As discussed on page 1 of the specification, lines 1-4, these cosmetic compositions comprise, in a cosmetically acceptable medium, at least one particular silicone copolymer, with a dynamic viscosity ranging from  $1 \times 10^6$  to  $100 \times 10^6$  cP, and at least particular conditioner.

Known cosmetic compositions for washing and caring for hair generally comprise conditioners, such as cationic polymers and silicones. *Specification*, page 1, lines 9-12. Such compositions are known to aid in disentangling the hair, as well as provide softness and suppleness to the hair. *Id.* These compositions, however, may also cause problems. For example, when these compositions are applied to hair, the hair may become lank and may also lack smoothness. *Id.* at lines 13-15. Moreover, because cationic polymers have a high affinity for hair, they cause their own unique problems when used in conditioning compositions. *Id.* at lines 16-21. For example, if cationic polymers are repeatedly applied to hair, the result may be hair that is stiff and has a laden and unpleasant feel. *Id.*

The novel compositions discovered by the Appellants may overcome at least one of these drawbacks seen in the prior art while still retaining at least one other advantageous cosmetic property, such as softness and suppleness. *Id.*, page 2, lines

5-13. Example 1 confirms this fact. Hair treated with the conditioning composition, prepared in accordance with the invention, was soft, smooth, and disentangled easily. *Id.* at page 29, line 21 - page 30, line 22. Moreover, the inventors also found that when the conditioning compositions were applied to skin, they improved the softness of the skin. *Id.* at page 2, lines 14-16.

#### **VI. Issues**

(1) Whether claims 1-16, 44-47, 56, 73, 74, 81-85, 94, and 95 are patentable under 35 U.S.C. § 103(a) over *Dalle* in view of *Groh*;

(2) Whether claims 1-16, 44-71, 74, 81-84, 94, and 95 are patentable under 35 U.S.C. § 103(a) over *Dalle* in view of *Dubief*;

(3) Whether claims 1-17, 25, 27, 44-46, 56, 70, 71, 73, 74, 81-84, 94, and 95 are patentable under 35 U.S.C. § 103(a) over *Iwao* in view of *Dalle*; and

(4) Whether claims 18-24, 26, 28-43, 47-51, 60, and 65-69 are patentable under 35 U.S.C. § 103(a) over *Iwao* in view of *Dalle* and further in view of *Restle*.

#### **VII. Grouping Of Claims**

Each claim of this patent application is separately patentable, and upon issuance of a patent will be entitled to a separate presumption of validity under 35 U.S.C. § 282. For convenience in handling this Appeal, however, the claims will be grouped in one group. Thus, pursuant to 37 C.F.R. § 1.192(c)(7), in this Appeal, the rejected claims will stand or fall together.

#### **VIII. Argument**

Several basic factual inquiries must be made in order to determine the obviousness or non-obviousness of claims of a patent application under 35 U.S.C.

§ 103. These factual inquiries, set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), require the Examiner to:

- (1) Determine the scope and content of the prior art;
- (2) Ascertain the differences between the prior art and the claims in issue;
- (3) Resolve the level of ordinary skill in the pertinent art; and
- (4) Evaluate evidence of secondary considerations.

The obviousness or nonobviousness of the claimed invention is then evaluated in view of the results of these inquiries. *Graham*, 383 U.S. at 17-18. In making this evaluation, the references must be considered as a whole, and must suggest the desirability and thus the obviousness of making the combination. See M.P.E.P. § 2141. The references must also be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention. *Id.* Additionally, a reasonable expectation of success is the standard by which obviousness is determined. *Id.* Furthermore, the Examiner bears the initial burden of factually supporting a determination of obviousness in the rejection of the claimed invention. See M.P.E.P. § 2142.

Thus, in order to carry the initial burden of establishing a *prima facie* case of obviousness that satisfies the *Graham* standard, the Examiner must show (1) that all elements are disclosed by the prior art references, (2) that there exists some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings, and (3) that there is a reasonable expectation of success. See M.P.E.P. § 2143. For the reasons set forth below, the Examiner has failed to meet the

burden of establishing a *prima facie* case of obviousness with respect to any of the cited prior art.

**A. Dalle in view of Groh**

The Examiner has rejected claims 1-16, 44-47, 56, 73, 74, 81-85, 94, and 95 under 35 U.S.C. § 103(a) as unpatentable over *Dalle* in view of U.S. Patent No. 5,863,943 to Groh ("*Groh*") for the reasons set forth on pages 3-4 of the final Office Action dated October 22, 2003. Appellants respectfully disagree with this rejection.

According to the Examiner, *Dalle*, the primary reference, teaches cosmetic compositions in the form of emulsions comprising the claimed at least one silicone and the claimed surfactants. *Final Office Action dated October 22, 2003*, page 3. The Examiner notes that *Dalle* does not, however, teach the claimed at least one conditioner. *Id.* Accordingly, the Examiner finds this missing disclosure in *Groh*.

*Groh*, the Examiner contends, discloses skin conditioning oil-in-water emulsions comprising moisturizing or emollient elements such as polydecenes, polyisobutene, hydrogenated polyisobutenes, and silicones. *Id.* The Examiner also alleges that *Groh* teaches the presently claimed ionic surfactants. *Id.*, page 4. Based on these teachings, the Examiner concludes that "given the teaching of the silicone polymer of *Dalle* in personal care lotions, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to have looked to the prior arts such as *Groh* because of an expectation of successfully producing a skin conditioning aqueous emulsion composition." *Id.* The Examiner also adds that "[t]he skilled artisan would have been motivated to add the traditional emollient oils . . . because of the expectation of successfully producing a skin care composition . . . ." *Id.*

**1. Dalle Provides No Motivation For One of Ordinary Skill in the Art to Randomly Search and Find Emollient Oils to Add to a Skin Care Composition**

The Examiner provides insufficient reasoning as to why one skilled in the art would have been motivated to combine *Dalle* and *Groh*. Indeed, the Examiner relies on *Dalle*'s teaching that its silicone emulsion can be used in personal care lotions as a suggestion for one skilled in the art to embark on a wild goose chase to find other ingredients to include in these lotions. Armed with this suggestion, one skilled in the art would somehow find *Groh* and then incorporate *Groh*'s oils into *Dalle*'s lotions - expecting, according to the Examiner, to create a successful skin care composition. This rationale, however, would render obvious any known personal care ingredient in combination with *Dalle*'s silicone emulsion. This is an unreasonable extension of the concept of obviousness.

Indeed, under the Examiner's standard for establishing obviousness, *any* component that is also useful in, for example, a skin lotion, would be obvious to combine with *any other* component that is useful in, for example, shampoo, even without incentive to combine them. However, the law prescribes no such standard. The Federal Circuit has consistently held that without proper motivation, a rejection based on prima facie obviousness is improper even if the combination of references taught every element of the claimed invention. See M.P.E.P. § 2143.01 (citing *In re Rouffet*, 149 F.3d 1350, 1357 (Fed. Cir. 1998)). Moreover, "[t]o establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making *the specific combination*

that was made by the applicant.” In re Kotzab, 217 F.3d 1365, 1371 (Fed. Cir, 2000) (emphasis added). Appellants submit that the prior art fails to show, and the Examiner has not demonstrated, why the claimed invention would have been particularly desirable.

This failing becomes more pronounced upon a close reading of the *Dalle* reference. While it is true that *Dalle* teaches a method of making silicone in water emulsions, nothing in this disclosure even remotely suggests the use of its silicone/water emulsions with synthetic oils, such as *Groh*’s synthetic oils. *Dalle* does, however, disclose that its emulsions can also include surfactants, see page 4, lines 26-51, and other optional materials that can assist in its silicone polymer chain extension reaction, such as perfumes and thickeners, page 4, line 56 - page 5, line 1. Notably, this list does not include oils.

Even assuming, *arguendo*, that *Dalle* would have motivated one skilled in the art to find *Groh*, *Groh* would not have led one so skilled to select its synthetic oils to use in conjunction with *Dalle*’s silicone emulsion. *Groh* is specifically directed to skin conditioning emulsions comprising high concentrations of alpha hydroxy acids stabilized using polyethylene glycol and a cationic surfactant. See *Abstract*. *Groh* only mentions in passing that its inventive compositions may also include additional ingredients in its oil phase, such as polydecane, polyisbutene, silicones etc. See col. 2-col. 4. However, nothing from *Groh*’s disclosure would have led a person of ordinary skill in the art to select, out of context, *Groh*’s traditional emollient oils, for use in *Dalle*’s silicone emulsions. Thus, for at least this reason, the rejection should be reversed and withdrawn.



**2. The Mere Fact That the Examiner Can Identify Each Claimed Element in the Prior Art Does Not by Itself Defeat Patentability**

As mentioned briefly above, for the sake of argument, even if the individual components of the presently claimed invention are found separately in *Dalle* and *Groh*, the separate disclosures do not defeat the patentability of the composition as a whole. The Federal Circuit has been clear on this point, and has held that “[m]ost if not all inventions arise from a combination of old elements . . . . However, identification in the prior art of each individual part claimed is insufficient to defeat patentability of the whole claimed invention.” *In re Kotzab*, 55 USPQ2d 1313, 1316 (Fed. Cir. 2000) (internal citations omitted).

In fact, Appellants admit in the Specification that conditioning compositions comprising cationic polymers and silicones are known. *Page* 1, lines 9-12. The Appellants found, however, that compositions comprising such ingredients may not always be entirely satisfactory. *Id.*, lines 22-23. Thus, to solve the problems of the prior art, the Appellants invented the presently *claimed composition*. This composition represents a marked improvement over other prior art compositions comprising, for example, silicones. Accordingly, the mere fact that the Examiner has found references disclosing each claimed ingredient does not demonstrate the claimed invention, as a whole, would have been obvious. The present invention is not just the “at least one conditioner.” Rather, the present invention is the “(1) at least one conditioner . . . and (2) at least one silicone copolymer with a dynamic viscosity ranging from  $1 \times 10^6$  to  $100 \times 10^6$  cP, resulting from the addition reaction . . . .” *See, e.g. Claim 1*. Thus, for at least this additional reason, the rejection is improper and should be withdrawn.

**3. The Examiner's Contention That One Would Expect to Produce a Successful Skin Conditioning Aqueous Emulsion Composition is Unreasonable**

Appellants submit that one skilled in the art would not have had a reasonable expectation of success in making the proposed combination. Indeed, *Groh* heavily emphasizes the difficulty in formulating oil-in-water emulsions. Specifically, due to their acidic nature, oil-in-water emulsions are unstable, have a relatively short shelf life, and can develop an unappealing appearance when stored. Col. 1, lines 31-36. Thus, one skilled in the art would not necessarily expect to create a successful cosmetic conditioning oil-in-water emulsion. Thus, for at least this additional reason, the rejection should be reversed and withdrawn.

**B. Dalle in view of Dubief**

The Examiner has rejected claims 1-16, 44-71, 74, 81-84, 94, and 95 under 35 U.S.C. § 103(a) as unpatentable over *Dalle* in view of *Dubief* for the reasons disclosed on pages 4-5 of the final Office Action. Appellants respectfully traverse this rejection.

In the final Office Action, the Examiner notes as above that *Dalle* fails to teach the presently claimed oils and surfactants. *Final Office Action dated October 22, 2003*, page 4. Accordingly, the Examiner relies on the teachings of *Dubief*, which allegedly discloses cosmetic emulsions comprising the claimed surfactants and oils. *Id.* The Examiner concludes that "[t]he skilled artisan would have been motivated to add the well-known surfactants in the *Dubief* reference because of an expectation of successfully producing an emulsion shampoo composition with good washing and cosmetic properties and good texture." *Id.* at 5. The Examiner further contends that "it would have been obvious to one of ordinary skill in the art at the time the invention was

made to have looked to the prior arts such as Dubief because of an expectation of successfully producing an emulsion shampoo composition.” *Id.*

In the Advisory Action dated February 9, 2004, the Examiner appears to modify her position. The Examiner now appears to base the rejection on the “notion that it would have been obvious to have adopted the Dubief shampoo formulation to make use of the Dalle silicone emulsion, rather than picking only the synthetic oil from the Dubief formulation.” *Advisory Action dated February 9, 2004*, page 2. Appellants submit, however, that no motivation would have existed to lead one skilled in the art to make the proposed modification.

**1. One Skilled in the Art Would Not Have Been Motivated to Adopt Dubief’s Shampoo Composition to Make Use of Dalle’s Silicone Emulsion**

Despite the Examiner’s modified position, the alleged motivation to combine *Dubief* and *Dalle* is still improper. Appellants take the position that there is no prima facie case of obviousness for the present claims in view of *Dalle* and *Dubief*. The Examiner, however, essentially urges that any silicone polymer can be used in the *Dubief* composition and relies upon the silicone emulsions disclosed in *Dalle* to provide this teaching. This position ignores the central teachings of *Dubief* that clearly do not suggest to one skilled in the art to “adopt” or modify its teachings.

*Dubief* heavily emphasizes the difficulty of efficiently keeping insoluble agents in suspension while maintaining other cosmetic properties, such as sufficient foam and stable crystallization. Col. 1, lines 35-36. For example, *Dubief* explains that the prior art compositions comprising long-chain ester or ether derivatives or polysaccharides allowed insoluble particles to be held in suspension but caused other problems to occur,

such as inferior crystallization resulting an increased viscosity over time. *Id.* at lines 35-45. In an attempt to remedy these defects seen in the prior art, the *Dubief* inventors sought to create a composition with improved foaming properties and sufficient viscosity while at the same time enabling the water-soluble conditioners to remain in suspension. Col. 2, lines 1-4.

Thus, *Dubief* invented a specific four component system that met these particular requirements. Specifically, *Dubief's* compositions comprise at least one anionic surfactant; at least one nonionic or amphoteric co-surfactant; at least one thickening polyacrylamide and at least one electrolyte." Col. 2, lines 25-30. As the examples illustrate, the removal of even one component from *Dubief's* invention resulted in compositions with inferior foaming properties and phase separation. *Compare Example 3* (composition comprising all claimed ingredients) *with Example 7* (composition wherein the at least one thickening polyacrylamide is replaced with a crosslinked copolymer of methyl vinyl ether and maleic anhydride). Thus, it is hard to believe that a person skilled in the art would have sought to adopt or even modify *Dubief* to include *Dalle's* silicone emulsions, as such a person would have understood that such a change could ruin the intended function of the compositions.

Although *Dubief* does disclose that its compositions can further comprise insoluble particles, such as "modified or unmodified silicone oils, resins or gums, col. 6, lines 24-31, silicone emulsions, such as those taught by *Dalle*, are not included in this rather limited list. Moreover, given the teachings of *Dubief*, one skilled in the art would not have sought to use any other type of silicone in *Dubief's* compositions, other than

the ones disclosed. Thus, for at least this reason, the proposed modification of *Dubief* is improper.

**2. The Examiner's Proposed Combination Would not Result in the Claimed Invention**

Even if *Dubief* were combined with *Dalle*, the resulting composition would not yield the claimed invention. *Dubief* is narrowly directed to shampoo compositions. Thus, if one skilled in the art "adopted" *Dubief*'s shampoo to make use of *Dalle*'s silicone emulsion, as the Examiner suggests, the resultant composition would be a shampoo.

As laid out in the attached Appendix, the present claims recite that the composition be provided in "a form chosen from a rinse-out conditioner, a leave-in conditioner, a composition for permanent-waving the hair, a composition for straightening the hair . . . ." See, e.g., Claim 1. Absent from this list is shampoos. Thus, the Examiner's proposed combination fails to teach or suggest each claimed limitation.

In an attempt to justify the rejection, the Examiner contends that "[t]he skilled artisan would have been motivated to add the well-known surfactants in the *Dubief* reference because of an expectation of successfully producing an *emulsion shampoo composition*" *Final Office Action dated October 22, 2003*, at page 5. The Examiner's contention is factually incorrect. *Dubief* teaches shampoos in the form of a dispersion and not an emulsion. It is known by those skilled in the art that shampoos are generally not emulsions. Thus, it is not reasonable to expect one skilled in the art to make a

successful “shampoo emulsion,” as alleged by the Examiner. Thus, for at least this reason the rejection is improper and should be reversed and withdrawn.

**3. Dalle Fails to Suggest Using a Silicone Copolymer Emulsion In Conjunction With Dubief’s Synthetic Oils**

The Examiner relies on *Dalle*’s teachings that “[its silicone emulsions are] useful as a delivery system for oil and water soluble substances,” as evidence that *Dalle* clearly teaches the use of oils in conjunction with its silicone emulsions. The Examiner, however, in supporting the rejection, fails to quote *Dalle* in its entirety. Instead, the Examiner only cites portions of the reference sufficient to support the rejection.

More accurately, *Dalle* discloses “[the emulsions of the invention are] useful as a delivery system for oil and water soluble substances such as vitamins, organic sunscreens, ceramides, pharmaceuticals and the like.” Page 5, lines 54-55. Thus, *Dalle* only suggests to one of skilled the art to use these types of oil soluble substances in conjunction with its silicone emulsions. Nothing in this disclosure suggests the use of synthetic oils, as taught by *Dubief*.

The Examiner then alleges that *Dalle* “teaches that the silicone emulsion can be mixed with conventional care ingredients such as moisturizing agents, for which the Dubief synthetic oils is used.” *Advisory Action*, page 3. First, nowhere in *Dubief* does it teach that the synthetic oils are used as moisturizing agents. Rather, *Dubief* merely discloses synthetic oils in a laundry list of water-insoluble particles that can be incorporated into its four-component composition. See col. 6, lines 24-31. Moreover, even if *Dalle* does disclose that its silicone emulsion can be mixed with moisturizing agents, such a statement does not explicitly or even implicitly suggest the use of

synthetic oils. There are many types of moisturizing agents and this generic disclosure simply would not have led one skilled in the art to *Dubief's* synthetic oils. Thus, for at least this additional reason, the rejection should be reversed and withdrawn.

**C. Iwao in view of Dalle**

The Examiner has rejected claims 1-17, 25, 27, 44-46, 56, 70, 71, 73, 74, 81-84, 94, and 95 as unpatentable under 35 U.S.C. § 103(a) over *Iwao* in view of *Dalle* for the reasons disclosed on pages 5-8 of the final Office Action dated October 22, 2003. Appellants disagree with this rejection as well.

The Examiner alleges that *Iwao* teaches hair conditioner compositions comprising synthetic oils, such as alpha-olefin polymers; quaternary ammonium salts; and nonionic surfactants. *Final Office Action dated October 22, 2003*, p. 5. The Examiner admits that *Iwao* fails to teach the presently claimed polysiloxane, therefore she again cites *Dalle* to make up for this deficiency. *Id.* The Examiner concludes that *Dalle* provides the motivation for the proposed modification because of the "expectation of successfully producing hair conditioner composition[s] which provide enhanced conditioning benefits to the hair." *Final Office Action dated October 22, 2003*, page 6. Further, the Examiner, relying on *In re Kerkhoven*, contends that it is "prima facie obvious to combine two compounds each of which is taught by the prior art to be useful for the same purpose, in order to form a composition which is to be used for the same purpose." *Office Action*, page 8.

**1. Nothing in Dalle Supports the Alleged Modification**

Appellants contend that the Examiner has not set forth sufficient evidence to justify the proposed modification, as *Dalle*, alone or even combined with *Iwao*, does not

support the alleged modification. See *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999) (requiring a “clear and particular” suggestion to combine prior art references). The Examiner urges that *Dalle* provides the necessary motivation to modify *Iwao* by incorporating its silicone emulsions into *Iwao*’s compositions, however, Appellants believe the Examiner has overstated the teachings of *Dalle*.

*Dalle* teaches only a method of making silicone in water emulsions, thus, nothing in this disclosure even remotely suggests the use of its silicone/water emulsions with *Iwao*’s synthetic oils. Although *Dalle* does disclose that its emulsions can be mixed with moisturizing agents, Appellants submit that such a broad and generic disclosure would not lead one to use *Iwao*’s synthetic oils. Thus, contrary to the Examiner’s allegation, *Dalle* does not provide the necessary motivation needed to make the proposed modification.

Moreover, in Appellants’ view, nothing in *Iwao* suggests the desirability of making such a modification. Indeed, simply because *Iwao* can be modified as suggested by the Examiner does not make the alleged modification obvious unless the prior art also suggests the desirability of the modification. *In re Gordon*, 733 F.2d 900, 902 (Fed. Cir. 1994). Although *Iwao* does disclose that a silicone such as dimethylpolysiloxane or methylphenylpolysiloxane can be used in its compositions, these polymers are only disclosed as optional ingredients. *Iwao*, col. 3, lines 60-62. Thus, one skilled in the art would not have been motivated to search for suitable replacements, such as *Dalle*’s silicone emulsions, for this optional ingredient.

In fact, *Iwao* primarily touts the advantages of liquid ester oil as an optional ingredient, thus making the Examiner’s alleged modification even more implausible.



*Iwao* teaches that the addition of liquid ester oil “can further improve the use effect (such as retention of conditioning effect or hair fixing effect) as well as the feeling of use of the hair conditioner composition.” *Id.*, col. 3, lines 17-21. Thus, given this favorable disclosure, why would one seek to incorporate *Dalle*’s silicone emulsions, particularly in light of the fact that *Iwao* only generally discloses the optional use of silicones in its compositions.

Thus, neither *Iwao* nor *Dalle* teach or suggest the desirability of the modification the Examiner proposes to obtain the claimed invention. Although these references may demonstrate that individual components of the present invention are known, for example, known as hair care ingredients, this fact, by itself, cannot be used to establish a prima facie case. See M.P.E.P. § 2143.01 (citing *In re Rouffet*, 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457 (Fed. Cir. 1998)). Thus, for at least these reasons, Appellants respectfully request that this rejection be reversed and withdrawn.

## **2. The Examiner has Improperly Relied on *In re Kerkhoven***

As discussed above, there is no evidence of a motivation to combine the cited references to obtain the claimed invention. Accordingly, the Examiner has relied on the Federal Circuit case of *In re Kerkhoven*, 609 F.2d 846 (C.C.P.A. 1980) for the proposition that combining two compounds, which are used for the same purpose, to form a composition, which is useful for the very same purpose, is prima facie obvious. *Final Office Action dated October 22, 2003*, page 8. Appellants maintain their position of record that this decision does not apply to the present case.

It is improper for the Examiner to rely on *Kerkhoven* to establish a prima facie case of obviousness without first establishing the elements of a prima facie case as

required by the Supreme Court's decision in *Graham v. John Deere*, 383 U.S. 1, 148 U.S.P.Q. 459 (1966). Moreover, legal precedent can be used as a source of supporting rationale only if the facts in the prior legal decision are sufficiently similar to the present case. M.P.E.P. § 2144.

With respect to *Kerkhoven*, Appellants respectfully submit that the facts therein are distinctly different from the present case, and thus the case is not applicable to support a prima facie case of obviousness. In *Kerkhoven*, the appealed claims related to a detergent which was a simple combination of two prior art detergents, i.e., the allegedly novel invention was solely a straightforward mixture of complete detergent compositions. The Court of Customs and Patent Appeals, therefore, held that the "appealed claims . . . require no more than the mixing together of two conventional detergents," and thus the claims were prima facie obvious. 626 F.2d at 850.

The presently claimed invention, unlike the invention of *Kerkhoven*, is not a simple combination of the compositions taught by *Iwao* and *Dalle*. Rather, in order to arrive at the presently claimed invention, the Examiner has picked and chosen ingredients from each reference without citing any support for *why* one skilled in the art would have selected those specific ingredients and combined them in a single composition. At best, the Examiner has merely demonstrated that it would have been obvious to try various combinations of known cosmetic ingredients in an attempt to obtain the claimed invention, which is not the standard required by law. To the contrary, the prior art must also provide sufficient impetus to lead one of ordinary skill to make the combination. By picking and choosing from and then combining only certain individual ingredients from the cited references, the Examiner has not followed the holding of

*Kerkhoven* regarding the combination of entire compositions. Accordingly, the Examiner has improperly relied on this case.

**D. *Iwao* in view of *Dalle* and further in view of *Restle***

Finally, the Examiner has rejected claims 18-24, 26, 28-43, 47-51, 60, and 65-69 under 35 U.S.C. § 103(a) as unpatentable over *Iwao* and *Dalle* and further in view of *Restle* for the reasons disclosed on pages 6-7 and 8 of the final Office Action of October 22, 2003. Appellants respectfully traverse this rejection as well.

The Examiner alleges that *Restle* generally teaches cosmetic oil-in-water emulsions comprising nonionic amphiphilic lipids, cationic amphiphilic lipids, synthetic essential oils, and cationic surfactants. *Final Office Action dated October 22, 2003*, page 6. The Examiner further notes that *Restle* teaches that the advantages of its compositions include enhanced penetration of active ingredients on hair and glossy appearance without greasy feel and softness. *Id.*, page 7. Without addressing the arguments of record, the Examiner concludes that it would have been obvious to substitute the cationic surfactants disclosed in *Iwao* with *Restle*'s cationic amphiphilic lipids based on the expectation of a similar glossy appearance and softness to the hair. *Id.* Appellants respectfully disagree.

**1. The Further Proposed Modification with *Restle* Does not Cure the Deficiencies of the Underlying References**

Appellants submit that even if *Restle* does teach cationic amphiphilic lipids as discussed above, *Restle* does not cure the deficient disclosure of the *Iwao* and *Dalle* references. Because there would have been no motivation to combine *Iwao* and *Dalle*, it necessarily follows that no motivation could have existed in the further modification of

this proposed combination with *Restle*. Thus, for this reason alone this rejection should be reversed and withdrawn.

## **2. Restle Does Not Support the Proposed Modification**

Moreover, the references, whether taken individually or combined, fail to objectively teach or suggest the presently claimed combination. It seems that the Examiner has again merely combined various ingredients from each reference without looking at each reference as a whole as required. *Restle* is drawn to an oil-in-water emulsion having oil globules with a mean size of 150 nm and an amphiphilic lipid phase containing at least one non-ionic amphiphilic lipid which is liquid at an ambient temperature of less than 45°C, and at least one cationic amphiphilic lipid. See e.g., Abstract. Importantly, *Restle* never suggests, implicitly or even explicitly, selecting one limitation from its invention, i.e., the cationic amphiphilic lipids, and incorporating it into a composition comprising *Dalle*'s silicone emulsion. Nor can this suggestion be found in either *Iwao* or *Dalle*. Rather, this suggestion derives solely from the present invention.

## **3. One Skilled in the Art Would Not Have A Reasonable Expectation of Success in Making the Alleged Modification**

The prior art establishes that emulsions are not easy to make. In fact, *Iwao* discloses that the use of synthetic oils in the form of an emulsion presents great difficulties in formulation. Col. 1, lines 42-43. For example, "even if emulsification is accomplished according to a known method by using a commonly employed type of surface active agent . . . , the state of the emulsion and stability become worse by increasing synthetic oils . . ." *Id.*, lines 45-50. What can be concluded, then, is that even known agents, when combined with synthetic oils, may not lead to a known result.

Emulsion chemistry is not a simple mixing of known ingredients. Rather, merely changing one ingredient or increasing the amount of an ingredient could ruin the texture or the stability of the emulsion.

But this is not how the Examiner characterizes the cited references. Rather, the Examiner glosses over the differences between the cited references in an effort to reject the claims. Indeed, in the Advisory Action the Examiner claims the present invention would have been obvious because "(1) the prior art are all directed to emulsion hair care compositions and (2) Iwao teaches using quaternary ammonium salts and nonionic surfactants." *Advisory Action dated February 9, 2004*, page 4. However, as the prior art teaches, one would not have had a reasonable expectation of success in swapping one ingredient in one emulsion for another. And the Examiner has provided no evidence as to why such an expectation would have been reasonable. Thus, for at least this reason, the rejection should be reversed and withdrawn.

**IX. Conclusion**

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this Appeal Brief, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: July 14, 2004

By: Mareesa A. Frederick  
Mareesa A. Frederick  
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### Appendix

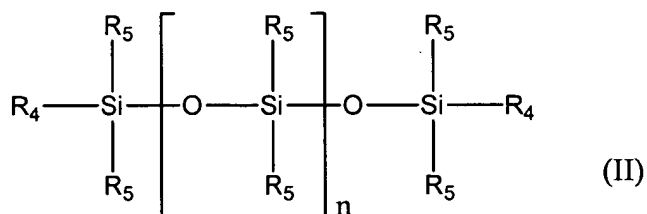
1. A cosmetic composition comprising:

(1) at least one conditioner chosen from:

- synthetic oils;
- animal oils;
- plant oils;
- fluoro oils;
- perfluoro oils;
- natural waxes; and
- synthetic waxes; and

(2) at least one silicone copolymer with a dynamic viscosity ranging from  $1 \times 10^6$  to  $100 \times 10^6$  cP, resulting from the addition reaction, in the presence of a catalyst, of:

- (a) at least one polysiloxane of formula (II):



in which:

-  $\text{R}_4$ , which may be identical or different, are independently chosen from groups that can react by chain addition reaction,

- R<sub>5</sub>, which may be identical or different, are independently chosen from alkyl, alkenyl, cycloalkyl, aryl, hydroxyl, and alkylaryl groups, and can optionally further comprise at least one functional group,- n is an integer wherein the polysiloxane of formula (II) has a kinematic viscosity ranging from 1 to 1 x 10<sup>6</sup> mm<sup>2</sup>/s; and

- (b) at least one silicone compound comprising at least one and not more than two groups capable of reacting with the groups R<sub>4</sub> of the at least one polysiloxane of formula (II), wherein:

- at least one of the at least one polysiloxane of formula (II) and the at least one silicone compound (b) comprises an aliphatic group comprising an ethylenic unsaturation;

- wherein the composition is in a form chosen from a rinse-out conditioner, a leave-in conditioner, a composition for permanent-waving the hair, a composition for straightening the hair, a composition for dyeing the hair, a composition for bleaching the hair, a rinse-out composition to be applied before a procedure chosen from dyeing, bleaching, permanent-waving and straightening the hair, a rinse-out composition to be applied after a procedure chosen from dyeing, bleaching, permanent-waving and straightening the hair, a rinse-out composition to be applied between the two steps of a permanent-waving operation, and a rinse-out composition to be applied between the two steps of a hair-straightening operation, an aqueous lotion, an aqueous-alcoholic lotion, a gel, a milk, a cream, an emulsion, a thickened lotion, and a mousse.

2. A composition according to claim 1, wherein R<sub>4</sub> is chosen from a hydrogen atom and aliphatic groups comprising an ethylenic unsaturation.



3. A composition according to claim 2, wherein the aliphatic groups comprising an ethylenic unsaturation are chosen from vinyl, allyl and hexenyl groups.

4. A composition according to claim 1, wherein the groups  $R_5$  are chosen from hydroxyl groups; alkyl groups comprising from 1 to 20 carbon atoms; cycloalkyl groups comprising from 5 to 6 carbon atoms; phenyl groups; alkylaryl groups comprising from 7 to 20 carbon atoms; and can optionally further comprise functional groups chosen from ethers, amines, carboxyls, hydroxyls, thiols, esters, sulfonates and sulfates.

5. A composition according to claim 1, wherein in  $R_5$ , said alkenyl groups are chosen from alkenyl groups comprising from 2 to 10 carbon atoms.

6. A composition according to claim 1, wherein  $R_5$  is a methyl group.

7. A composition according to claim 1, wherein  $n$  is an integer ranging from 5 to 5,000.

8. A composition according to claim 1, wherein the at least one silicone compound of type (b) is chosen from polysiloxanes of formula (II), in which  $R_4$ ,  $R_5$ , and  $n$  are defined as in claim 1 and wherein at least one or two groups  $R_4$  of the at least one silicone compound of type (b) can react with the groups  $R_4$  of the at least one polysiloxane of formula (II) of type (a), with the proviso that that said at least one silicone compound of type (b) differs from said at least one polysiloxane of formula (II) of type (a).

9. A composition according to claim 1, wherein, in the presence of a hydrosilylation catalyst, the at least one silicone copolymer is obtained by addition reaction of at least:

- (a) one  $\alpha,\omega$ -divinylpolydimethylsiloxane, and
- (b) one  $\alpha,\omega$ -dihydrogenopolydimethylsiloxane.

10. A composition according to claim 9, wherein the hydrosilylation catalyst is a platinum catalyst.

11. A composition according to claim 1, wherein said at least one silicone copolymer is in the form of an aqueous emulsion.

12. A composition according to claim 1, wherein the at least one silicone copolymer is essentially non-crosslinked.

13. A composition according to claim 1, wherein the at least one silicone copolymer is present in an amount ranging from 0.05% to 10% by weight relative to the total weight of the composition.

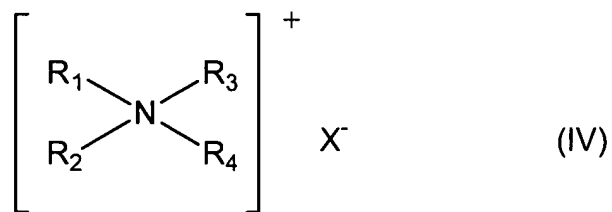
14. A composition according to claim 13, wherein the at least one silicone copolymer is present in an amount ranging from 0.1% to 5% by weight relative to the total weight of the composition.

15. A composition according to claim 11, wherein said aqueous emulsion of the at least one silicone copolymer has a silicone droplet or particle size ranging from 10 nm to 50  $\mu\text{m}$ .

16. A composition according to claim 15, wherein said emulsion of the at least one silicone copolymer has a silicone droplet or particle size ranging from 0.3  $\mu\text{m}$  to 20  $\mu\text{m}$ .

17. A composition according to claim 1 further comprising at least one cationic surfactant chosen from:

A) quaternary ammonium salts of formula (IV) below:

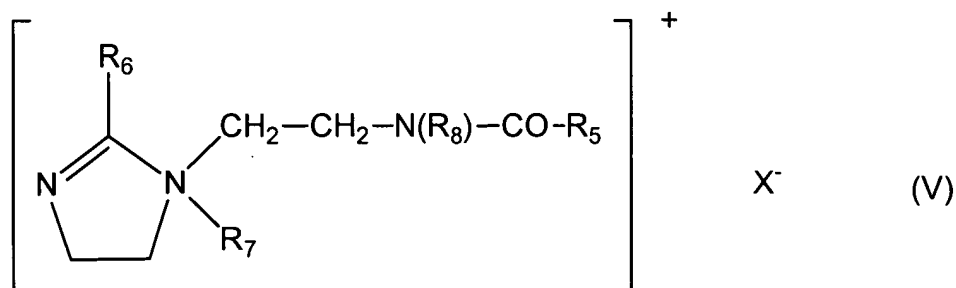


in which:

- the radicals  $R_1$ ,  $R_2$ ,  $R_3$ , and  $R_4$ , which may be identical or different, are independently chosen from linear and branched aliphatic radicals comprising from 1 to 30 carbon atoms, and aromatic radicals, wherein the aliphatic radicals optionally comprise hetero atoms, and

-  $X^-$  is an anion chosen from the group of halides, phosphates, anions derived from organic acids,  $(C_2-C_6)$ alkyl sulfates, alkyl sulfonates, and alkylaryl sulfonates;

B) quaternary ammonium salts of imidazolinium of formula (V) below:

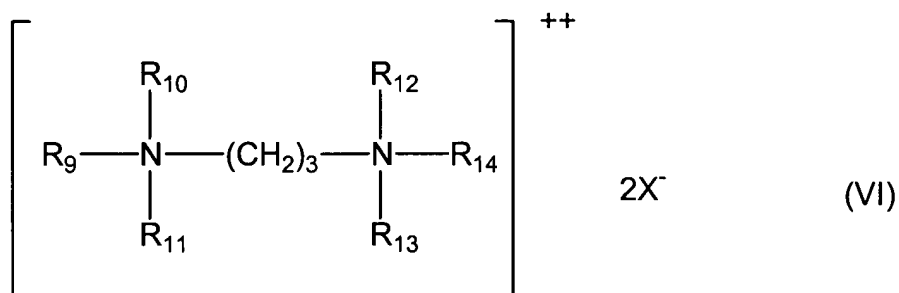


in which:

-  $R_5$  is chosen from alkenyl and alkyl radicals comprising from 8 to 30 carbon atoms,

- R<sub>6</sub> is chosen from a hydrogen atom, C<sub>1</sub>-C<sub>4</sub> alkyl radicals, and alkenyl and alkyl radicals comprising from 8 to 30 carbon atoms,
- R<sub>7</sub> is chosen from C<sub>1</sub>-C<sub>4</sub> alkyl radicals,
- R<sub>8</sub> is chosen from a hydrogen atom and C<sub>1</sub>-C<sub>4</sub> alkyl radicals, and
- X<sup>-</sup> is an anion chosen from halides, phosphates, acetates, lactates, alkyl sulfates, alkyl sulfonates, and alkylaryl sulfonates;

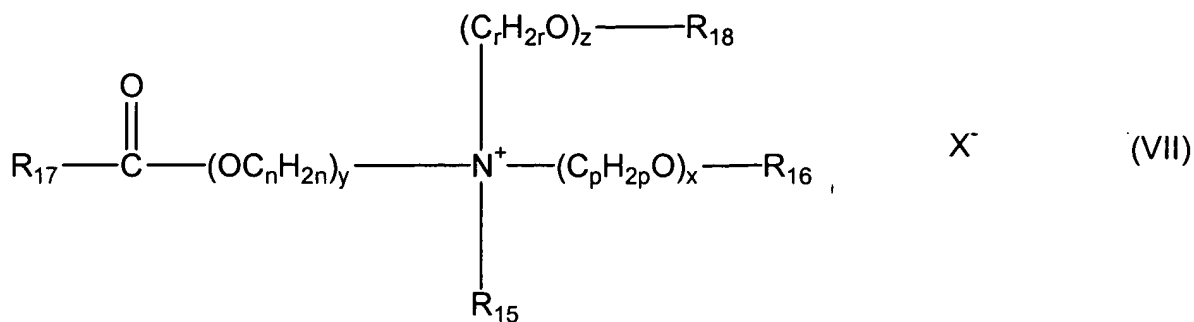
C) diquatamary ammonium salts of formula (VI):



in which:

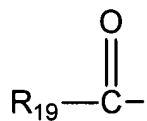
- R<sub>9</sub> is chosen from aliphatic radicals comprising from 16 to 30 carbon atoms,
- R<sub>10</sub>, R<sub>11</sub>, R<sub>12</sub>, R<sub>13</sub> and R<sub>14</sub>, which may be identical or different, are independently chosen from a hydrogen atom and alkyl radicals comprising from 1 to 4 carbon atoms, and
- X<sup>-</sup> is an anion chosen from halides, acetates, phosphates, nitrates and methyl sulfates;

D) quaternary ammonium salts of formula (VII) below comprising at least one ester function:



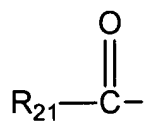
in which:

- R<sub>15</sub> is chosen from C<sub>1</sub>-C<sub>6</sub> alkyl radicals and C<sub>1</sub>-C<sub>6</sub> hydroxyalkyl and C<sub>1</sub>-C<sub>6</sub> dihydroxyalkyl radicals;
- R<sub>16</sub> is chosen from:
- acyl groups of the following formula:



wherein R<sub>19</sub> is defined below,

- linear and branched, saturated and unsaturated, C<sub>1</sub>-C<sub>22</sub> hydrocarbon-based radicals,
- and
- a hydrogen atom;
- R<sub>18</sub> is chosen from:
- acyl groups of the following formula:

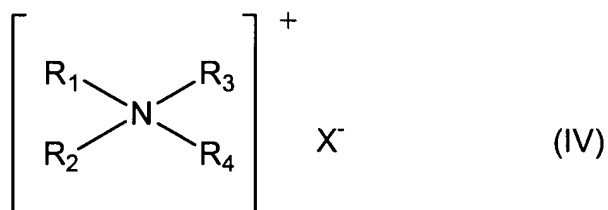


wherein  $R_{21}$  is defined below,

- linear and branched, saturated and unsaturated,  $C_1$ - $C_6$  hydrocarbon-based radicals,
- and
- a hydrogen atom;
- $R_{17}$ ,  $R_{19}$  and  $R_{21}$ , which may be identical or different, are independently chosen from linear and branched, saturated and unsaturated,  $C_7$ - $C_{21}$  hydrocarbon-based radicals;
- $n$ ,  $p$  and  $r$ , which may be identical or different, are independently integers ranging from 2 to 6;
- $y$  is an integer ranging from 1 to 10;
- $x$  and  $z$ , which may be identical or different, are independently integers ranging from 0 to 10; and
- $X^-$  is chosen from simple and complex, organic and inorganic anions; and
- provided that the sum  $x + y + z$  is from 1 to 15, and that when  $x$  is 0, then  $R_{16}$  is chosen from linear and branched, saturated and unsaturated,  $C_1$ - $C_{22}$  hydrocarbon-based radicals, and that when  $z$  is 0, then  $R_{18}$  is chosen from linear and branched, saturated and unsaturated,  $C_1$ - $C_6$  hydrocarbon-based radicals.

18. A composition according to claim 17, wherein said at least one cationic surfactant is chosen from:

A) quaternary ammonium salts of formula (IV) below:



wherein:

-  $X^-$  is an anion chosen from halides, (C<sub>2</sub>-C<sub>6</sub>)alkyl sulfates, phosphates, alkyl and alkylaryl sulfonates, and anions derived from organic acids, and

i) - the radicals R<sub>1</sub>, R<sub>2</sub>, and R<sub>3</sub>, which may be identical or different, are independently chosen from linear and branched aliphatic radicals comprising from 1 to 4 carbon atoms, optionally comprising hetero atoms, and aromatic radicals, and

- R<sub>4</sub> is chosen from linear and branched alkyl radicals comprising from 16 to 30 carbon atoms;

ii) - the radicals R<sub>1</sub> and R<sub>2</sub>, which may be identical or different, are independently chosen from linear and branched aliphatic radicals comprising from 1 to 4 carbon atoms, optionally comprising hetero atoms, and aromatic radicals, and

- R<sub>3</sub> and R<sub>4</sub>, which may be identical or different, are independently chosen from linear and branched alkyl radicals comprising from 12 to 30 carbon atoms, wherein said radicals further comprise at least one function chosen from ester and amide functions.

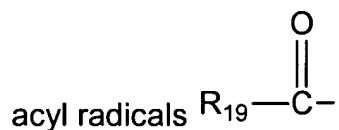
19. A composition according to claim 17, wherein in said quaternary ammonium salts of formula (VII):

- R<sub>15</sub>, is chosen from methyl and ethyl radicals,

- x and y are equal to 1;

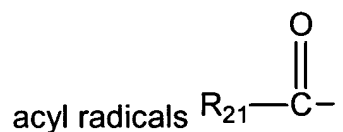
- z is equal to 0 or 1;

- n, p and r are equal to 2;
- R<sub>10</sub>, is chosen from:



wherein R<sub>19</sub> is defined below,

- methyl, ethyl and C<sub>14</sub>-C<sub>22</sub> hydrocarbon-based radicals, and
  - a hydrogen atom;
- R<sub>18</sub> is chosen from:



- wherein R<sub>21</sub> is defined below,
  - a hydrogen atom; and
- R<sub>17</sub>, R<sub>19</sub> and R<sub>21</sub>, which may be identical or different, are independently chosen from linear and branched, saturated and unsaturated, C<sub>13</sub>-C<sub>17</sub> hydrocarbon-based radicals.

20. A composition according to claim 19, wherein R<sub>17</sub>, R<sub>19</sub> and R<sub>21</sub> are chosen from linear and branched, saturated and unsaturated C<sub>13</sub>-C<sub>17</sub> aliphatic radicals.

21. A composition according to claim 19, wherein the hydrocarbon-based radicals are chosen from linear hydrocarbon-based radicals.



22. A composition according to claim 17, wherein the compounds of formula (VII) are chosen from diacyloxyethyldimethylammonium, diacyloxyethylhydroxyethylmethylammonium, monoacyloxyethyldihydroxyethylmethylammonium, triacyloxyethylmethylammonium and monoacyloxyethylhydroxyethyldimethylammonium salts.

23. A composition according to claim 22, wherein said monoacyloxyethylhydroxyethyldimethylammonium salts are chosen from monoacyloxyethylhydroxyethyldimethylammonium chloride salts and monoacyloxyethylhydroxyethyldimethylammonium methyl sulfate salts.

24. A composition according to claim 19, wherein when  $R_{16}$  and  $R_{18}$  are chosen from acyl radicals, said acyl radicals are obtained from plant oils chosen from palm oil and sunflower oil.

25. A composition according to claim 17, wherein  $X^-$  of said quaternary ammonium salts of formula (IV) is an anion chosen from chloride, bromide, iodide, methyl sulfate, acetate, and lactate.

26. A composition according to claim 17, wherein said aromatic radicals of said quaternary ammonium salts of formula (IV) are chosen from aryl and alkylaryl.

27. A composition according to claim 17, wherein said hetero atoms of said quaternary ammonium salts of formula (IV) are chosen from oxygen, nitrogen, sulfur and halogens.

28. A composition according to claim 18, wherein said aliphatic radicals of formula (IV)(ii) are chosen from alkyl, alkoxy, alkylamide, polyoxy( $C_2$ - $C_6$ )alkylene, and hydroxyalkyl radicals comprising from 1 to 4 carbon atoms.

29. A composition according to claim 18, wherein said  $R_3$  and  $R_4$  of formula (IV)(ii) are chosen from  $(C_{12}-C_{22})$ alkylamido $(C_2-C_6)$ alkyl and  $(C_{12}-C_{22})$ alkylacetate radicals.

30. A composition according to claim 17, wherein said  $R_5$  of formula (V) is chosen from radicals derived from tallow fatty acid.

31. A composition according to claim 17, wherein in said quaternary ammonium salts of imidazolinium of formula (V):

- $R_5$  and  $R_6$ , which may be identical or different, are independently chosen from alkenyl and alkyl radicals comprising from 12 to 21 carbon atoms,
- $R_7$  is methyl, and
- $R_8$  is hydrogen.

32. A composition according to claim 31, wherein said  $R_5$  and  $R_6$ , which may be identical or different, are independently chosen from radicals derived from tallow fatty acid.

33. A composition according to claim 17, wherein said diquaternary ammonium salts comprise propane tallow diammonium dichloride.

34. A composition according to claim 17, wherein said  $R_{15}$  alkyl radicals of said quaternary ammonium salts of formula (VII) are chosen from linear and branched  $C_1-C_6$  alkyl radicals.

35. A composition according to claim 34, wherein said  $R_{15}$  radicals are linear radicals.

36. A composition according to claim 35, wherein said  $R_{15}$  radicals are chosen from methyl, ethyl, hydroxyethyl and dihydroxypropyl.

37. A composition according to claim 36, wherein said  $R_{15}$  radicals are chosen from methyl and ethyl.

38. A composition according to claim 17, wherein said sum of  $x + y + z$  of said quaternary ammonium salts of formula (VII) ranges from 1 -10.

39. A composition according to claim 17, wherein said quaternary ammonium salts of formula (IV) are chosen from (a) compounds comprising at least two fatty aliphatic radicals comprising from 8 to 30 carbon atoms, (b) compounds comprising at least one fatty aliphatic radical comprising from 17 to 30 carbon atoms, and (c) compounds comprising at least one aromatic radical.

40. A composition according to claim 17, wherein said at least one cationic surfactant is chosen from behenyltrimethylammonium salts, stearamidopropyldimethyl(myristyl acetate)ammonium salts, Quaternium-27 and Quaternium-83.

41. A composition according to claim 17, wherein the at least one cationic surfactant is present in an amount ranging from 0.1% to 10% by weight relative to the total weight of the composition.

42. A composition according to claim 41, wherein the at least one cationic surfactant is present in an amount ranging from 0.5% to 7% by weight relative to the total weight of the composition.

43. A composition according to claim 42, wherein the at least one cationic surfactant is present in an amount ranging from 1% to 5% by weight relative to the total weight of the composition.

44. A composition according to claim 1 further comprising at least one surfactant chosen from anionic, nonionic, and amphoteric surfactants.

45. A composition according to claim 44, wherein the at least one surfactant chosen from anionic, nonionic, and amphoteric surfactants is present in an amount ranging from 0.1% to 60% by weight, relative to the total weight of the composition.

46. A composition according to claim 45, wherein the at least one surfactant chosen from anionic, nonionic, and amphoteric surfactants is present in an amount ranging from 3% to 40% by weight, relative to the total weight of the composition.

47. A composition according to claim 46, wherein the at least one surfactant chosen from anionic, nonionic, and amphoteric surfactants is present in an amount ranging from 5% to 30% by weight, relative to the total weight of the composition.

48. A composition according to claim 44, wherein the at least one surfactant chosen from anionic, nonionic, and amphoteric surfactants comprises at least one anionic surfactant salt chosen from alkyl sulfates, alkyl ether sulfates, alkylamidoether sulfates, alkylaryl polyether sulfates, monoglyceride sulfates; alkyl sulfonates, alkyl phosphates, alkylamide sulfonates, alkylaryl sulfonates,  $\alpha$ -olefin sulfonates, paraffin sulfonates; alkyl sulfosuccinates, alkyl ether sulfosuccinates, alkylamide sulfosuccinates; alkyl sulfosuccinamates; alkyl sulfoacetates; alkyl ether phosphates; acyl sarcosinates; acyl isethionates and N-acyltaurates.

49. A composition according to claim 44, wherein said at least one surfactant is chosen from anionic surfactants chosen from alkaline salts, sodium salts, ammonium salts, amine salts, amino alcohol salts and magnesium salts.

50. A composition according to claim 48, wherein said alkyl and acyl portions of radicals of said salts comprise 1 and from 8 to 24 carbon atoms, and said aryl portions of radicals of said salts are phenyl.

51. A composition according to claim 44, wherein said at least one surfactant is chosen from anionic surfactants chosen from fatty acid salts, acyl lactates wherein the acyl radical comprises 8 to 20 carbon atoms, and weakly anionic surfactants.

52. A composition according to claim 51, wherein said fatty acid salts are chosen from the salts of oleic acid, ricinoleic acid, palmitic acid, stearic acid, coconut oil acid and hydrogenated coconut oil acid.

53. A composition according to claim 44, wherein said at least one surfactant is chosen from anionic surfactants chosen from alkyl-D-galactosiduronic acids and their salts, polyoxyalkylenated (C<sub>6</sub>-C<sub>24</sub>) alkyl ether carboxylic acids and their salts, polyoxyalkylenated (C<sub>6</sub>-C<sub>24</sub>) alkylaryl ether carboxylic acids and their salts, and polyoxyalkylenated (C<sub>6</sub>-C<sub>24</sub>) alkylamido ether carboxylic acids and their salts.

54. A composition according to claim 51, wherein said weakly anionic surfactants comprise from 2 to 50 ethylene oxide groups.

55. A composition according to claim 48, wherein said at least one anionic surfactant salt is chosen from alkyl sulfates and alkyl ether sulfates.

56. A composition according to claim 44, wherein said at least one surfactant is chosen from nonionic surfactants chosen from polyethoxylated, polypropoxylated and polyglycerolated fatty acids, alkylphenols,  $\alpha$ -diols and alcohols having a fatty aliphatic chain comprising from 8 to 18 carbon atoms, wherein the number of ethylene oxide and propylene oxide groups ranges from 2 to 50 and the number of glycerol groups ranges

from 2 to 30, copolymers of ethylene oxide and of propylene oxide, condensates of ethylene oxide and of propylene oxide with fatty alcohols, polyethoxylated fatty amides comprising from 2 to 30 mol of ethylene oxide, polyglycerolated fatty amides comprising on average 1 to 5 glycerol groups, polyethoxylated fatty amines comprising from 2 to 30 mol of ethylene oxide, oxyethylenated fatty acid esters of sorbitan comprising from 2 to 30 mol of ethylene oxide, fatty acid esters of sucrose, fatty acid esters of polyethylene glycol, alkylpolyglycosides, N-alkylglucamine derivatives, and amine oxides.

57. A composition according to claim 56, wherein said polyglycerolated fatty amides comprise on average from 1.5 to 4 glycerol groups.

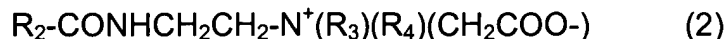
58. A composition according to claim 56, wherein said amine oxides are chosen from (C<sub>10</sub>-C<sub>14</sub>)alkylamine oxides and N-acylaminopropylmorpholine oxides.

59. A composition according to claim 56, wherein said nonionic surfactants are chosen from alkylpolyglycosides.

60. A composition according to claim 44, wherein said at least one surfactant is chosen from amphoteric surfactants chosen from aliphatic secondary and tertiary amine derivatives wherein the aliphatic radical is chosen from linear and branched chain radicals comprising from 8 to 22 carbon atoms and comprising at least one water-soluble anionic group, (C<sub>8</sub>-C<sub>20</sub>)alkylbetaines, sulfobetaines, (C<sub>8</sub>-C<sub>20</sub>)alkylamido(C<sub>1</sub>-C<sub>6</sub>)alkylbetaines, and (C<sub>8</sub>-C<sub>20</sub>)alkylamido(C<sub>1</sub>-C<sub>6</sub>)alkylsulfobetaines.

61. A composition according to claim 60, wherein said at least one water-soluble anionic group is chosen from carboxylates, sulfonates, sulfates, phosphates and phosphonates.

62. A composition according to claim 60, wherein said amine derivatives are chosen from the compounds:



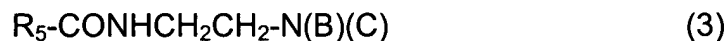
in which:

-  $R_2$  is chosen from alkyl radicals derived from an acid  $R_2\text{-COOH}$  present in hydrolysed coconut oil, heptyl, nonyl and undecyl radicals,

-  $R_3$  is chosen from  $\beta$ -hydroxyethyl groups, and

-  $R_4$  is chosen from carboxymethyl groups;

and



in which:

- (B) is  $\text{-CH}_2\text{CH}_2\text{OX'}$ , with  $X'$  chosen from a  $\text{-CH}_2\text{CH}_2\text{-COOH}$  group and a hydrogen atom,

- (C) is  $\text{-(CH}_2)_z\text{-Y'}$  with  $z = 1$  or  $2$ , and with  $Y'$  chosen from  $\text{-COOH}$  and  $\text{-CH}_2\text{-CHOH-SO}_3\text{H}$  radicals,

-  $R_5$  is chosen from alkyl radicals and unsaturated  $C_{17}$  radicals.

63. A composition according to claim 62, wherein said alkyl radicals  $R_5$  are chosen from (a) alkyl radicals of an acid  $R_5\text{-COOH}$  present in oils chosen from coconut oil and hydrolysed linseed oil, and (b)  $C_{17}$  alkyl radicals and the iso forms.

64. A composition according to claim 62, wherein said alkyl radicals of said  $R_5$  are chosen from alkyl radicals chosen from  $C_7$ ,  $C_9$ ,  $C_{11}$  and  $C_{13}$  alkyl radicals.

65. A composition according to claim 44, wherein said at least one surfactant is chosen from at least two surfactants of different types.

66. A composition according to claim 65, wherein said at least two surfactants of different types are chosen from (a) more than one anionic surfactant, (b) at least one anionic surfactant and at least one amphoteric surfactant, and (c) at least one anionic surfactant and at least one nonionic surfactant.

67. A composition according to claim 44, wherein said at least one surfactant is chosen from anionic surfactants chosen from (C<sub>12</sub>-C<sub>14</sub>)alkyl sulfates of sodium, of triethanolamine and of ammonium, (C<sub>12</sub>-C<sub>14</sub>)alkyl ether sulfates of sodium, of triethanolamine and of ammonium, oxyethylenated with 2.2 mol of ethylene oxide, sodium cocoyl isethionate, and sodium(C<sub>14</sub>-C<sub>16</sub>)- $\alpha$ -olefin sulfonate, and from an amphoteric surfactant chosen from either:

- amine derivatives comprising disodium cocoamphodipropionate and sodium cocoamphopropionate, or
- amphoteric surfactants of zwitterionic type.

68. A composition according to claim 67, wherein said amphoteric surfactants of zwitterionic type are chosen from alkylbetaines.

69. A composition according to claim 68, wherein said alkylbetaines are chosen from cocobetaine.

70. A composition according to claim 1, further comprising at least one additive chosen from fragrances, nacreous agents, preserving agents, silicone sunscreens, non-silicone sunscreens, vitamins, provitamins, amphoteric, anionic and nonionic polymers, proteins, protein hydrolysates, 18-methyleicosanoic acid, hydroxy acids, panthenol, volatile and non-volatile, cyclic and linear and crosslinked, modified and non-modified silicones, and any other additive conventionally used in cosmetics



which does not substantially adversely affect the properties of the compositions according to the invention.

71. A composition according to claim 70, wherein said at least one additive is present in an amount ranging from 0 to 20% by weight relative to the total weight of the composition.

72. (Canceled)

73. The composition according to claim 1, wherein said composition chosen from aqueous and aqueous-alcoholic lotions is suitable for skin care or for hair care.

74. A gel, a milk, a cream, an emulsion, a thickened lotion or a mousse according to claim 1, wherein said gel, milk, cream, emulsion, thickened lotion or mousse is suitable to be applied to at least one keratin material chosen from skin, nails, eyelashes, lips and hair.

75. (Canceled)

76. (Canceled)

77. (Canceled)

79. (Canceled)

80. (Canceled)

81. A process of caring for a keratin material comprising applying to said keratin material a composition comprising:

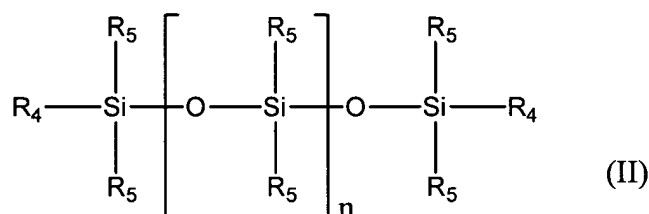
(1) at least one conditioner chosen from:

- synthetic oils;
- animal oils;
- plant oils;

- fluoro oils;
- perfluoro oils;
- natural waxes; and
- synthetic waxes; and

(2) at least one silicone copolymer with a dynamic viscosity ranging from  $1 \times 10^6$  to  $100 \times 10^6$  cP, resulting from the addition reaction, in the presence of a catalyst, of:

- (a) at least one polysiloxane of formula (II):



in which:

- $\text{R}_4$ , which may be identical or different, are independently chosen from groups that can react by chain addition reaction,
- $\text{R}_5$  in formula (II), which may be identical or different, are independently chosen from alkyl, alkenyl, cycloalkyl, aryl, hydroxyl, and alkylaryl groups, and can optionally further comprise at least one functional group,-  $n$  is an integer wherein the polysiloxane of formula (II) has a kinematic viscosity ranging from 1 to  $1 \times 10^6$  mm<sup>2</sup>/s; and
- (b) at least one silicone compound comprising at least one and not more than two groups capable of reacting with the groups  $\text{R}_4$  of the at least one polysiloxane of formula (II), wherein:
  - at least one of the at least one polysiloxane of formula (II) and the at least one silicone compound (b) comprises an aliphatic group comprising an ethylenic unsaturation;

- wherein the composition is in a form chosen from a rinse-out conditioner, a leave-in conditioner, a composition for permanent-waving the hair, a composition for straightening the hair, a composition for dyeing the hair, a composition for bleaching the hair, a rinse-out composition to be applied before a procedure chosen from dyeing, bleaching, permanent-waving and straightening the hair, a rinse-out composition to be applied after a procedure chosen from dyeing, bleaching, permanent-waving and straightening the hair, a rinse-out composition to be applied between the two steps of a permanent-waving operation, and a rinse-out composition to be applied between the two steps of a hair-straightening operation, an aqueous lotion, an aqueous-alcoholic lotion, a gel, a milk, a cream, an emulsion, a thickened lotion, and a mousse.

82. A process for treating a keratin material comprising applying to said keratin material a composition comprising:

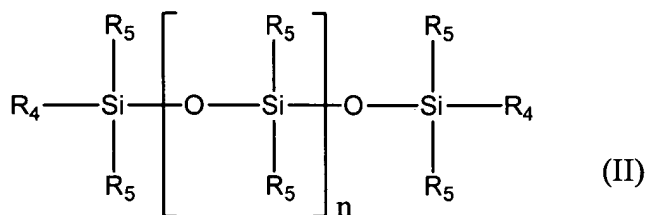
(1) at least one conditioner chosen from:

- synthetic oils;
- animal oils;
- plant oils;
- fluoro oils;
- perfluoro oils;
- natural waxes; and
- synthetic waxes; and

(2) at least one silicone copolymer with a dynamic viscosity ranging from  $1 \times 10^6$  to  $100 \times 10^6$  cP, resulting from the addition reaction, in the presence of a catalyst, of:

- (a) at least one polysiloxane of formula (II):

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in which:

- R<sub>4</sub>, which may be identical or different, are independently chosen from groups that can react by chain addition reaction,
- R<sub>5</sub> in formula (II), which may be identical or different, are independently chosen from alkyl, alkenyl, cycloalkyl, aryl, hydroxyl, and alkylaryl groups, and can optionally further comprise at least one functional group,- n is an integer wherein the polysiloxane of formula (II) has a kinematic viscosity ranging from 1 to 1 x 10<sup>6</sup> mm<sup>2</sup>/s; and
- (b) at least one silicone compound comprising at least one and not more than two groups capable of reacting with the groups R<sub>4</sub> of the at least one polysiloxane of formula (II), wherein:
  - at least one of the at least one polysiloxane of formula (II) and the at least one silicone compound (b) comprises an aliphatic group comprising an ethylenic unsaturation, and optionally rinsing said composition out with water;
  - wherein the composition is in a form chosen from a rinse-out conditioner, a leave-in conditioner, a composition for permanent-waving the hair, a composition for straightening the hair, a composition for dyeing the hair, a composition for bleaching the hair, a rinse-out composition to be applied before a procedure chosen from dyeing, bleaching, permanent-waving and straightening the hair, a rinse-out composition to be applied after a procedure chosen from dyeing, bleaching, permanent-waving and

straightening the hair, a rinse-out composition to be applied between the two steps of a permanent-waving operation, and a rinse-out composition to be applied between the two steps of a hair-straightening operation, an aqueous lotion, an aqueous-alcoholic lotion, a gel, a milk, a cream, an emulsion, a thickened lotion, and a mousse.

83. A process for treating a keratin material according to claim 82, wherein said keratin material is chosen from hair, skin, eyelashes, eyebrows, nails, lips, and scalp.

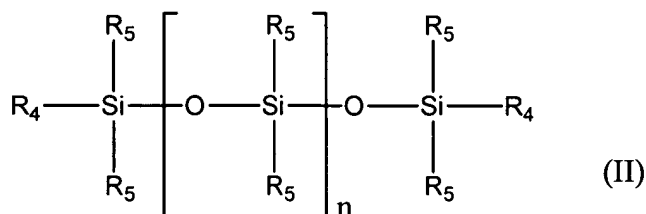
84. A process for manufacturing a cosmetic product comprising including in said product:

(1) at least one conditioner chosen from:

- synthetic oils;
- animal oils;
- plant oils;
- fluoro oils;
- perfluoro oils;
- natural waxes; and
- synthetic waxes; and

(2) at least one silicone copolymer with a dynamic viscosity ranging from  $1 \times 10^6$  to  $100 \times 10^6$  cP, resulting from the addition reaction, in the presence of a catalyst, of:

- (a) at least one polysiloxane of formula (II):



in which:

- R<sub>4</sub> which may be identical or different, are independently chosen from groups that can react by chain addition reaction,
- R<sub>5</sub> in formula (II), which may be identical or different, are independently chosen from alkyl, alkenyl, cycloalkyl, aryl, hydroxyl, and alkylaryl groups, and can optionally further comprise at least one functional group,- n is an integer wherein the polysiloxane of formula (II) has a kinematic viscosity ranging from 1 to 1 x 10<sup>6</sup> mm<sup>2</sup>/s; and
- (b) at least one silicone compound comprising at least one and not more than two groups capable of reacting with the groups R<sub>4</sub> of the at least one polysiloxane of formula (II), wherein:
  - at least one of the at least one polysiloxane of formula (II) and the at least one silicone compound (b) comprises an aliphatic group comprising an ethylenic unsaturation;
  - wherein the composition is in a form chosen from a rinse-out conditioner, a leave-in conditioner, a composition for permanent-waving the hair, a composition for straightening the hair, a composition for dyeing the hair, a composition for bleaching the hair, a rinse-out composition to be applied before a procedure chosen from dyeing, bleaching, permanent-waving and straightening the hair, a rinse-out composition to be applied after a procedure chosen from dyeing, bleaching, permanent-waving and

straightening the hair, a rinse-out composition to be applied between the two steps of a permanent-waving operation, and a rinse-out composition to be applied between the two steps of a hair-straightening operation, an aqueous lotion, an aqueous-alcoholic lotion, a gel, a milk, a cream, an emulsion, a thickened lotion, and a mousse.

85. A composition according to Claim 1, wherein said synthetic oils are chosen from hydrogenated polybutene, non-hydrogenated polybutene, hydrogenated polydecene, and non-hydrogenated polydecene.

86. (Withdrawn)

87. (Withdrawn)

88. (Withdrawn)

89. (Withdrawn)

90. (Withdrawn)

91. (Withdrawn)

92. (Withdrawn)

93. (Cancelled)

94. A composition according to Claim 1, wherein said at least one conditioner is present in an amount ranging from 0.001 % to 20% by weight relative to the total weight of said composition.

95. A composition according to Claim 94, wherein said at least one conditioner is present in an amount ranging from 0.01 % to 10% by weight relative to the total weight of said composition.